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EXAMINER

DAVISON, KATHLEEN G

ART UNIT	PAPER NUMBER
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3625

NOTIFICATION DATE	DELIVERY MODE
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07/26/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto-sl@huschblackwell.com

Office Action Summary	Application No. 10/583,160	Applicant(s) MO ET AL.	
	Examiner KATHLEEN DAVISON	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-17, 23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/16/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

The following is a non-final, first office action in response to the application filed June 16, 2006. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Korea on December 3, 2004. It is noted, however, that applicant has not filed a certified copy of the 2007-012749 application as required by 35 U.S.C. 119(b). Claims 1-18 and 23-24 have been withdrawn. Claims 18-22 are currently pending and have been examined.

Applicant's election without traverse of Group II, claims 18-22, in the reply filed on June 8, 2010 is acknowledged.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on June 16, 2006, has been considered by the Examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 1. Claims 18-22** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites the limitation "the pseudo-3D user-adapted coordination program". There is insufficient antecedent basis for this limitation in these claims. Appropriate correction is required.

Dependent claims 19-22 do not act to cure the deficiencies of claim 18, and are thereby rejected for at least the same rationale.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 18-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 18-22 are directed to methods. One tool for assisting in determining whether the claimed invention is directed to a statutory process under 35 USC 101 is the "machine-or-transformation" test. If a claimed method meets the "machine-or-transformation" test, the method is likely patent-eligible under 35 USC 101 unless there is a clear indication that the method is directed to an abstract idea. If a claimed method does not meet the "machine-or-transformation" test, the claim will be considered directed to a non-statutory process unless there is a clear indication that the method is not directed to an abstract idea.

An analysis of method claims using the "machine-or-transformation" test seeks to determine whether the claimed method is (1) tied to a particular machine or apparatus, or (2) transforms a particular article to a different state or thing. In addition, mere field of use limitations or limitations reciting insignificant extra-solution activity will not transform an unpatentable process into a patentable one as the machine or transformation must impose meaningful limits on the method claim's scope.

In the instant case, claim 18 lacks any recitation of a machine, let alone a recitation which creates a substantial tie so as to impose meaningful limitations on the

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claim scope. The steps are not tied to any machine nor do they transform an underlying article to a different state or thing. Accordingly, these claims fail to pass the "machine-or-transformation" test. Further to the analysis as to whether the claims recite a statutory process under 35 USC 101, there is nothing of record which clearly indicates that the method recited is not directed to an abstract idea. Accordingly, these claims fail to set forth a statutory process under 35 USC 101.

Dependent claims 19-22 do not act to cure the deficiencies of claim 18, and are thereby rejected for at least the same rationale.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 18-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feld et al (US 2001/0026272 A1) in view of Beams et al (US 7152092 B2), and further in view of Ling (US 2005/0010483 A1).

Regarding claim 18, Feld discloses *an online service method of using a pseudo-3D total clothes coordination comprising:*

registering a selling item (Feld: paragraph [0039] and Figure 3 disclose where the user specifies the data to be downloaded, such as size, color, material type, pattern, and so on);

creating a standard 2D image of the registered item (Feld: Figure 4 illustrates a vendor station - pick your clothing and Figure 10 illustrates 205 obtain digital representation of 2-D object to be manufactured);

displaying a coordination of the selling item according to a coordination request of a user on the coordination program (Feld: Figure 5 illustrates 62 display 3-D image of wear article on 3-D model);

processing a purchase request of the user for the displayed coordination image (Feld: paragraph [0053] discloses where another option available to the user may include selecting a displayed purchase button associated with the server module for connecting to a vendor station to purchase or place the wear article in a shopping cart at the vendor station); *and*

dividing profits from the item (Feld: paragraph [0062] discloses where the user may then select a separate purchase button at the vendor station to complete the transaction).

Feld does not expressly disclose *installing ActiveX by inserting an HTML code of the pseudo-3D user-adapted coordination program using artificial intelligence on the service website*. Beams discloses *installing ActiveX by inserting an HTML code of the*

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pseudo-3D user-adapted coordination program using artificial intelligence on the service website (Beams: see at least: abstract discloses where the system utilizes an artificial intelligence engine driving individualized and dynamic feedback with synchronized audio, video, graphics and animation used to simulate real-world environment and interactions and column 11 lines 30-45 disclose where the tools use Internet standards, work on multiple platforms, and are being supported by over 100 companies. The group's building blocks are called ActiveX Controls, small, fast components that enable developers to embed parts of software in hypertext markup language (HTML) pages).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have modified the system and method of Feld to have included installing ActiveX by inserting an HTML code of the pseudo-3D user-adapted coordination program using artificial intelligence on the service website, as taught by Beams because it would provide dynamic content (3-D virtual technology) for the internet (Beams: column 11 lines 30-45).

The combination of Feld and Beams does not disclose *enrolling as a seller member on a service website*. However, Ling teaches *enrolling as a seller member on a service website* (Ling: paragraph [0039] discloses where to participate in the system, vendors, shipping companies and users all must be registered with service provider computer).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the combination of Feld and Beams, in the method and apparatus for enrolling as a seller member on a service website, as taught by Ling since

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the claimed invention is just a combination of old elements, and in the combination each element merely would have performed that same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. One of ordinary skill in the art would have been motivated to do so because it would enable a seller to transfer or receive money from users of the system (Ling: paragraph [0012]).

Regarding claim 19, Feld, Beams, and Ling teach or suggest all the limitations of claim 18 as noted above. Feld further discloses *wherein creating the standard 2D image comprises:*

drawing in an item such as a clothes having a specific style on a presented basic 2D coordination image (Feld: paragraph [0075] discloses where the digital representation can be obtained by preparing drawings of the patterns using conventional computer drafting programs or specialized drawing programs for a particular industry relating to the wear article and paragraph [0076] discloses where an integrated two-dimensional drawing program can also be implemented with the system of the present invention for drawing and/or editing the patterns);

assembling additional patterns by selecting prepared accessories such as a collar, a pocket, a button, a logo, a decoration and so on (Feld: Figure 10 illustrates select material type, material design, stitch type);

uploading a new additional pattern or an item pattern (Feld: paragraph [0039] and Figure 3 disclose where the user specifies the data to be downloaded, such as size, color, material type, pattern, and so on); *and*

adjusting sizes of the respective accessories when assembling additional patterns (Feld: Figure 10 illustrates 235 make adjustments).

Regarding claim 20, Feld, Beams, and Ling teach or suggest all the limitations of claim 18 as noted above. Feld further discloses:

requesting a custom-made order fitting to a user body shape information through the pseudo-3D user-adapted total clothes coordination method (Feld: Figure 2 illustrates 236 modify 3-D object and 2-D patterns based on real time adjustments); *and*

manufacturing and selling the custom-made clothes fitting to the user body shape information derived from the program in response to the custom-made order (Feld: Figure 2 illustrates 237 construct actual object, and paragraph [0053] discloses where another option available to the user may include selecting a displayed purchase button associated with the server module for connecting to a vendor station to purchase or place the wear article in a shopping cart at the vendor station).

Beams further discloses *the 3D method using artificial intelligence* (Beams: see at least: abstract discloses where the system utilizes an artificial intelligence engine driving individualized and dynamic feedback with synchronized audio, video, graphics and animation used to simulate real-world environment and interactions).

Regarding claim 22, Feld, Beams, and Ling teach or suggest all the limitations of claim 19 as noted above. Feld further discloses:

creating a user-desired item by using the standard image assembling tool (Feld: Figure 2 illustrates 236 modify 3-D object and 2-D patterns based on real time adjustments, paragraph [0075] discloses where the digital representation can be obtained by preparing drawings of the patterns using conventional computer drafting programs or specialized drawing programs for a particular industry relating to the wear article, and paragraph [0076] discloses where an integrated two-dimensional drawing program can also be implemented with the system of the present invention for drawing and/or editing the patterns); *and*

processing the order and delivering the created design through the pseudo-3D user-adapted total clothes coordination program (Feld: Figure 2 illustrates 237 construct actual object and paragraph [0053] discloses where another option available to the user may include selecting a displayed purchase button associated with the server module for connecting to a vendor station to purchase or place the wear article in a shopping cart at the vendor station).

Beams further discloses *the 3D method using artificial intelligence* (Beams: see at least: abstract discloses where the system utilizes an artificial intelligence engine driving individualized and dynamic feedback with synchronized audio, video, graphics and animation used to simulate real-world environment and interactions).

4. **Claim 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Feld et al (US 2001/0026272 A1) in view of Beams et al (US 7152092 B2), in view of Ling (US 2005/0010483 A1), and further in view of Lee (US 2005/0022708 A1).

Regarding claim 21, Feld, Beams, and Ling teach or suggest all the limitations of claim 18 as noted above. Beams further discloses *the 3D method using artificial intelligence* (Beams: see at least: abstract discloses where the system utilizes an artificial intelligence engine driving individualized and dynamic feedback with synchronized audio, video, graphics and animation used to simulate real-world environment and interactions).

The combination of Feld, Beams, and Ling does not disclose *evaluating the user body shape information and the user coordination style through the pseudo-3D user-adapted total clothes coordination method; and recommending the user as a fashion model candidate when the user receives a grade over a specific level according to the evaluated result*. However, Lee teaches:

evaluating the user body shape information and the user coordination style through the pseudo-3D user-adapted total clothes coordination method (Lee: paragraph [0093] discloses where the fit model's body measurements at each critical body point of measurement is compared to customized body measurement standards); *and*

recommending the user as a fashion model candidate when the user receives a grade over a specific level according to the evaluated result (Lee: paragraph [0093] discloses where the fit model body measurements at each critical body point of

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measurement is evaluated as to whether it falls within previously set tolerances. If not, another fit model is selected. If so, the fit model selection is complete).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the combination of Feld, Beams, and Ling, in the system and method for evaluating the user body shape information and the user coordination style through the pseudo-3D user-adapted total clothes coordination method; and recommending the user as a fashion model candidate when the user receives a grade over a specific level according to the evaluated result., as taught by Lee since the claimed invention is just a combination of old elements, and in the combination each element merely would have performed that same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. One of ordinary skill in the art would have been motivated to do so because it would create a fit model that conforms with customized body measurement standards, providing users with better fit apparel, reducing returns, accelerating sales, and increasing consumer confidence and loyalty (Lee: paragraph [0006] and paragraph [0093]).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US 7663648 B1, Saldanha et al discloses a system and method for displaying selected garments on a computer-simulated mannequin.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **KATHLEEN DAVISON** whose telephone number is **571.270.1355**. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **JEFF SMITH** can be reached at **571.272.6763**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

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